

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RACHEL G. M.,

Case No. 22-CV-0463 (PJS/DTS)

Plaintiff,

v.

ORDER

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Mahesha P. Subbaraman, SUBBARAMAN PLLC, for plaintiff.

James D. Sides, OFFICE OF THE GENERAL COUNSEL, SOCIAL SECURITY
ADMINISTRATION, for defendant.

Plaintiff brought this action for review of the denial of her application for benefits under Titles II and XVI of the Social Security Act. This matter is before the Court on defendant's objection to the January 27, 2023, Report and Recommendation ("R&R") of Magistrate Judge David T. Schultz. Judge Schultz recommends remanding this case for a new determination of benefits on the ground that the Administrative Law Judge ("ALJ") who adjudicated plaintiff's case was not properly appointed. In particular, relying on *Brian T.D. v. Kijakazi*, 580 F. Supp. 3d 615 (D. Minn. 2022), Judge Schultz determined that in July 2018, when Nancy Berryhill, the then-acting commissioner of the Social Security Administration, ratified the appointments of all

existing ALJs, she was no longer properly serving as acting commissioner and her ratification was therefore ineffective. In the alternative, Judge Schultz recommends that if this Court disagrees with his analysis regarding the purported ratification of the ALJ appointments, then this Court should grant defendant's motion for summary judgment and affirm the denial of benefits.

The Eighth Circuit recently issued its decision in *Brian T.D. v. Kijakazi*, holding that Berryhill was properly serving as the acting commissioner and that the July 2018 ratification of the ALJs' appointments was therefore valid. *See* No. 22-1601, — F.4th —, 2023 WL 2379383, at *4 (8th Cir. Mar. 7, 2023). Accordingly, the Court rejects the R&R's recommendation to remand this case and adopts the alternative recommendation on the merits, to which no party has objected.

ORDER

Based on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendant's objection [ECF No. 33] is SUSTAINED.
2. The Report and Recommendation [ECF No. 32] is ADOPTED IN PART and REJECTED IN PART.
3. Plaintiff's motion for summary judgment [ECF No. 15] is DENIED.
4. Defendant's motion for summary judgment [ECF No. 25] is GRANTED.

5. This action is DISMISSED WITH PREJUDICE AND ON THE MERITS.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 8, 2023

s/Patrick J. Schiltz

Patrick J. Schiltz, Chief Judge
United States District Court